

AMENDED IN SENATE JANUARY 7, 2008

AMENDED IN SENATE APRIL 9, 2007

**SENATE BILL**

**No. 1033**

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**Introduced by Senator Runner  
(Coauthor: Senator Negrete McLeod)**

February 23, 2007

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~~An act to add Section 1203.42 to the Penal Code, relating to criminal procedure.~~ *An act to amend Section 12001.1 of the Penal Code, relating to undetectable knives.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as amended, Runner. ~~Criminal procedure: peace officers: expungement.~~ *Undetectable knives.*

*Existing law provides that any person who commercially manufactures or causes to be commercially manufactured, knowingly imports into the state for commercial sale, keeps for commercial sale, or offers or exposes for commercial sale, any undetectable knife is guilty of a misdemeanor. Existing law provides that these provisions do not apply to the manufacture or importation of undetectable knives for sale to a law enforcement or military entity.*

*This bill would additionally provide that any person who knowingly exports out of this state for commercial, dealer, wholesaler, or distributor sale, or who offers or exposes for dealer, wholesaler, or distributor sale any undetectable knife is guilty of a misdemeanor. This bill would require a valid agency, department, or unit purchase order to exempt from these provisions the manufacture or importation of undetectable knives for sale to a law enforcement or military entity. Because this bill would expand the definition of a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides that conviction for certain misdemeanors imposes a prohibition for 10 years against possession of a firearm, as specified. Existing law provides a petition process for peace officers convicted of certain of these offenses involving domestic violence that allows a one-time exemption from that prohibition, as specified. Federal law imposes a prohibition against possession of a firearm by a person who has been convicted of a domestic violence offense, unless the offense has been expunged from the person's record.~~

~~This bill would require expungement of the conviction for those peace officers who are convicted of the relevant offenses prior to January 1, 2007, and who have complied with the provisions authorizing a one-time exemption from the firearm possession prohibition and the conditions of probation, as specified. The bill would also authorize peace officers who are convicted of any of the predicate offenses on or after January 1, 2007, to be permitted to withdraw his or her guilty plea or nolo contendere, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12001.1 of the Penal Code is amended  
2     to read:  
3     12001.1. (a) Any person in this state who commercially  
4     manufactures or causes to be commercially manufactured, or who  
5     knowingly imports into the state for commercial sale, or who  
6     knowingly exports out of this state for commercial, dealer,  
7     wholesaler, or distributor sale, or who keeps for commercial sale,  
8     or offers or exposes for commercial, dealer, wholesaler, or  
9     distributor sale, any undetectable knife is guilty of a misdemeanor.  
10    As used in this section, an "undetectable knife" means any knife  
11    or other instrument with or without a handguard that is capable of  
12    ready use as a stabbing weapon that may inflict great bodily injury  
13    or death that is commercially manufactured to be used as a weapon

1 and is not detectable by a metal detector or magnetometer, either  
2 handheld or otherwise, that is set at standard calibration.

3 (b) Notwithstanding any other provision of law, commencing  
4 January 1, 2000, all knives or other instrument with or without a  
5 handguard that is capable of ready use as a stabbing weapon that  
6 may inflict great bodily injury or death that are commercially  
7 manufactured in this state that utilize materials that are not  
8 detectable by a metal detector or magnetometer, shall be  
9 manufactured to include materials that will ensure they are  
10 detectable by a metal detector or magnetometer, either handheld  
11 or otherwise, that is set at standard calibration.

12 (c) This section shall not apply to the manufacture or importation  
13 of undetectable knives for sale to a law enforcement or military  
14 entity *with a valid agency, department, or unit purchase order*;  
15 nor shall this section apply to the subsequent sale of these knives  
16 to a law enforcement or military entity.

17 (d) This section shall not apply to the manufacture or importation  
18 of undetectable knives for sale to federal, state, and local historical  
19 societies, museums, and institutional collections which are open  
20 to the public, provided that the undetectable knives are properly  
21 housed and secured from unauthorized handling, nor shall this  
22 section apply to the subsequent sale of the knives to these societies,  
23 museums, and collections.

24 *SEC. 2. No reimbursement is required by this act pursuant to*  
25 *Section 6 of Article XIII B of the California Constitution because*  
26 *the only costs that may be incurred by a local agency or school*  
27 *district will be incurred because this act creates a new crime or*  
28 *infraction, eliminates a crime or infraction, or changes the penalty*  
29 *for a crime or infraction, within the meaning of Section 17556 of*  
30 *the Government Code, or changes the definition of a crime within*  
31 *the meaning of Section 6 of Article XIII B of the California*  
32 *Constitution.*

33 ~~SECTION 1. Section 1203.42 is added to the Penal Code, to~~  
34 ~~read:~~

35 ~~1203.42. (a) (1) A court shall expunge from a defendant's~~  
36 ~~record a conviction, and the defendant shall thereafter be released~~  
37 ~~from all penalties and disabilities resulting from the offense of~~  
38 ~~which he or she has been convicted, if all of the following are true~~  
39 ~~of the defendant:~~

1     (A) He or she is employed as a peace officer described in Section  
2     830.1, 830.2, 830.31, 830.32, 830.33, or 830.35 whose employment  
3     or livelihood is dependent on the ability to legally possess a  
4     firearm.

5     (B) He or she was convicted, prior to January 1, 2007, of a  
6     misdemeanor under Section 273.5, 273.6, or 646.9.

7     (C) He or she petitioned the court pursuant to paragraph (2) of  
8     subdivision (c) of Section 12021, which petition was granted.

9     (D) He or she fulfilled the conditions of probation for the entire  
10    period of probation, or, if discharged prior to the termination of  
11    the probation period, then if the probation period has ended, or, if  
12    not granted probation, then if one year has passed since the date  
13    of the pronouncement of judgment.

14    (2) However, if the defendant is subsequently prosecuted for  
15    any other offense, the prior conviction may be pleaded and proved  
16    and shall have the same effect as if probation had not been granted  
17    or the accusation or information dismissed, in which case the  
18    expungement order shall state, and the defendant shall be informed,  
19    that the order does not relieve him or her of the obligation to  
20    disclose the conviction in response to any direct question contained  
21    in any questionnaire or application for public office, for licensure  
22    by any state or local agency, or for contracting with the California  
23    State Lottery.

24    (b) A defendant who meets all of the conditions in paragraph  
25    (1) of subdivision (a) shall be permitted by the court to withdraw  
26    his or her plea of guilty or plea of nolo contendere and enter a plea  
27    of not guilty; or, if he or she has been convicted after a plea of not  
28    guilty, the court shall set aside the verdict of guilty; and, in either  
29    case, the court shall thereupon dismiss the accusations or  
30    information against the defendant and except as noted below, he  
31    or she shall thereafter be released from all penalties and disabilities  
32    resulting from the offense of which he or she has been convicted.  
33    The probationer shall be informed, in his or her probation papers,  
34    of this right and privilege and his or her right, if any, to petition  
35    for a certificate of rehabilitation and pardon. The probationer may  
36    make the application and change of plea in person or by attorney,  
37    or by the probation officer authorized in writing. However, in any  
38    subsequent prosecution of the defendant for any other offense, the  
39    prior conviction may be pleaded and proved and shall have the  
40    same effect as if probation had not been granted or the accusation

1 or information dismissed. The order shall state, and the probationer  
2 shall be informed, that the order does not relieve him or her of the  
3 obligation to disclose the conviction in response to any direct  
4 question contained in any questionnaire or application for public  
5 office, for licensure by any state or local agency, or for contracting  
6 with the California State Lottery.

7 (e) ~~A person who petitions for a change of plea or setting aside~~  
8 ~~of a verdict under subdivision (b) may be required to reimburse~~  
9 ~~the court for the actual cost of services rendered, whether or not~~  
10 ~~the petition is granted and the records are sealed or expunged, at~~  
11 ~~a rate to be determined by the court not to exceed one hundred~~  
12 ~~twenty dollars (\$120), and to reimburse the county for the actual~~  
13 ~~cost of services rendered, whether or not the petition is granted~~  
14 ~~and the records are sealed or expunged, at a rate to be determined~~  
15 ~~by the county board of supervisors not to exceed one hundred~~  
16 ~~twenty dollars (\$120), and to reimburse any city for the actual cost~~  
17 ~~of services rendered, whether or not the petition is granted and the~~  
18 ~~records are sealed or expunged, at a rate to be determined by the~~  
19 ~~city council not to exceed one hundred twenty dollars (\$120).~~  
20 ~~Ability to make this reimbursement shall be determined by the~~  
21 ~~court using the standards set forth in paragraph (2) of subdivision~~  
22 ~~(g) of Section 987.8 and shall not be a prerequisite to a person's~~  
23 ~~eligibility under this section. The court may order reimbursement~~  
24 ~~in any case in which the petitioner appears to have the ability to~~  
25 ~~pay, without undue hardship, all or any portion of the cost for~~  
26 ~~services established pursuant to this subdivision.~~